HIGH COURT OF UTTARANCHAL AT NAINITAL.

Writ Petition No. 4136 (M/S) 2001
(Old No. 14035 of 1988

Smt. Sushila Devi W/o Late Radhey Mohan Tandon.
And two others. ...Petitioners

Vs.

IV Addl. District Judge, Nainital, ...Respondents.

Sri K.N. Joshi, learned counsel for the petitioners.
Sri M.K. Goel, learned counsel for the respondent No.4

AND

Writ Petition No. 7395 (M/S) 2001
(Old No. 16116 of 1988)

Sri Suresh Chandra Goel,
S/o late Bhagwati Prasad Goel,
R/o Village Manpur North, P.O. Manpur West,
Distt. Nainital. ...Petitioner.

Vs.

Addl. District Judge, Nainital,
And others. ...Respondents.

Sri M.K. Goel, learned counsel for the petitioner,
Sri K.N. Joshi, learned counsel for the respondents.

Hon'ble P.C. Verma, J.

By means of writ petition, No. 4136 (M/S) 2001, the petitioners have challenged the judgment and order dated 24.05.1988 passed by IV Addl. District Judge, Nainital in Rent Control revision No. 52 of 1983. The said revision was filed against the judgment and order dated 31.03.1983 passed by the Prescribed Authority/S.D.M., Haldwani on the application of the petitioner moved under Section 16 of U.P. Act No. 13 of 1972.

By means of writ petition No. 7395 (M/S) 2001, the petitioner has challenged the judgment and order dated 24.05.1988 passed by IV Addl. District Judge, Nainital in Rent Control Appeal No. 23 of 1982. The said appeal was

filed against the judgment and order dated 04.09.1982 passed by the Prescribed Authority/Munsif Haldwani on the application of the petitioenr moved under Section 21 of U.P. Act No. 13 of 1972.

In both the writ petitions, there is same dispute for release of the accommodation in question and controversy is between the same parties, therefore, they are being disposed of by a common judgment.

During pendency of the writ petition Smt. Mano Devi W/o Bhagwati Prasad died and her legal heir were substituted in her place.

Heard learned counsel for the parties and perused the orders impugned.

In the application moved under Section 21 of the Act No. 13 of 1972, the petitioner arrayed Brij Mohan Tandon as tenant. Hari Mohan Tandon & Radhey Mohan Tandon (brothers of Brij Mohan Tandon) were arrayed to be the unauthorised occupants. Sri Brij Mohan Tandon did not contest the case at any level. The case of the petitioner was contested by Hari Mohan Tandon and Radhey Mohan Tandon. The trial court compared the hardship between the landlord and unauthorised occupants and ordered for release of the building. Radhey Mohan Tandon and Hari Mohan Tandon filed appeal against the said order of the prescribed Authority. During the pendency of Rent Appeal Sri Radhey Mohan died, therefore, his wife Sushila Devi Tandon and two sons were substituted in his plce. The Prescribed Authority fell into error in finding greater hardship in favour of the landlord and wrongly released the premises in question in favour of the landlord. The Appellate Court, accordingly, set-aside the judgment of the prescribed Authority and rejected the application filed by

the landlord under Section 21 of the Act. Both the courts below have committed manifest error of law that the application filed under Section 21 of the Act could not maintainable against the unauthorised occupants. There is no evidence on record to show that Hari Mohan Tandon and Radhey Mohan Tandon became tenant under the U.P. Act No. 13 of 1972 except their mutual arrangement. The evidence on record shows that Brij Mohan Tandon was the tenant of the accommodation in question. Both the courts below ought to have rejected the application filed under Section 21 of the Act and ought to have held that the application is not maintainable against the unauthorised occupants. Provision has been made under Section 12 of Act No. 13 of 1972 for declaration of vacancy thereafter provision of Section 16 of the Act shall be drawn. Therefore, I set-aside the judgment passed by the Prescribed Authority as well as Addl. District Judge and also reject the application field under Section 21 of the Act, as it was not maintainable against Hari Mohan Tandon and Radhey Mohan Tandon, who were unauthorised occupants.

The writ petition No. 7395 (M/S) 2001 lacks merit and is disposed of as such. No order as to cots.

In writ petition No. 4136 (M/S) 2001, the Rent Control and Eviction Officer after considering hardship of the landlord, release the accommodation in question in favour of the landlord. The Revisional Court has also found hardship of the landlord to be genuine; therefore, he has confirmed the order passed by Rent Control and Eviction Office. I find no infirmity or perversity in the impugned judgment. The writ petition No. 4136 (m/S)

2001 has no merit and is liable to be dismissed accordingly.

Accordingly writ petition No. 4136 (M/S) 2001 is dismissed. No order as to costs.

(Rajesh Tandon, J.)

December 17,2003:
NCM: